



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

November 21, 1978

Mr. Bill Jamieson, Director
Department of Economic Security
P. O. Box 6123
Phoenix, AZ 85005

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: I78-264 (R78-234)

Dear Mr. Jamieson:

You have requested our opinion about the application of A.R.S. § 23-791 to benefits paid under the Old Age, Survivors, and Disability Insurance provisions of the Social Security Act (Federal Insurance Contribution Act--26 U.S.C. 3101, et seq.). Specifically, the question is whether the receipt of social security retirement benefits disqualifies a claimant from receiving unemployment insurance benefits to the extent that both are based upon contributions from the same employer during the same period of time.

A.R.S. § 23-791 states:

Wages paid by a base-period employer to an individual whose benefit year begins after December 31, 1978 and who at the time of claiming or receiving benefits is receiving any payment on account of retirement which is based on any previous work for such base-period employer shall not be considered "wages for insured work" within the meaning of paragraph 6 of § 23-771 and §§ 23-607 and 23-779. Added Laws 1977, Ch. 166, §18, eff. Jan. 1, 1978.

This statute was enacted in response to the 1976 amending of section 3304(a) of the Federal Unemployment Tax Act (26 U.S.C. § 3304[a]) to add a section mandating a dollar for dollar reduction in unemployment benefits if the claimant "is receiving a governmental or other pension, retirement or retired pay,

Office of the
Attorney General
Phoenix, Arizona

Mr. Bill Jamieson
November 21, 1978
Page 2

annuity or other similar periodic payment which is based on the previous work of such individual. . . ." (26 U.S.C. § 3304[a][15]).¹

This federal amendment was presented in Senate debates. By examining the transcript of the debates, found in the "Congressional Record" of September 29, 1978, it is clear that Social Security retirement benefits are covered by the amendment. The summary of legislative history (94 U.S. Code Congressional & Administrative News 6470) states:

Under the Senate amendment, States would be required to reduce the unemployment compensation of an individual by the amount of any public or private pension (including social security retirement benefits and railroad retirement annuities) based on the claimant's previous employment. (Emphasis added.)

It is clear that Congress, by adopting the Senate proposal, intended to include social security retirement benefits in determining the amounts to be paid to a claimant for unemployment benefits. It is also clear that Congress did not intend that receipt of such retirement benefits would make a claimant ineligible for unemployment benefits.

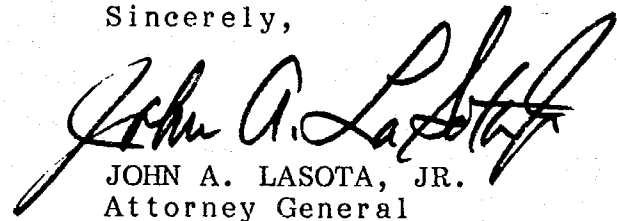
¹26 U.S.C. § 3304(a)(15) states: The amount of compensation payable to an individual for any week which begins after September 30, 1979, and begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week.

Office of the
Attorney General
Phoenix, Arizona

Mr. Bill Jamieson
November 21, 1978
Page 3

Pursuant to A.R.S. § 23-791, the receipt of any retirement pension for work in a specific year would make wages paid during that period not wages for insured work. According to 26 U.S.C. § 3304(a)(15), with which A.R.S. § 23-791 seeks conformity, social security retirement benefits are "pensions" as used in § 23-791. Therefore, if a claimant for unemployment benefits is receiving social security retirement benefits, the wages covered by the pension are not to be considered "wages for insured work".

Sincerely,



JOHN A. LASOTA, JR.
Attorney General